



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

NOV 18 2009

REPLY TO THE ATTENTION OF:

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mark Guerriero, Plant Manager
The Dayton Power and Light Company
O.H. Hutchings Station
9200 Chautaugua Road
Miamisburg, Ohio 45342

RE: Notice of Violations issued to Dayton Power and Light Company (DP&L)

Dear Mr. Guerriero:

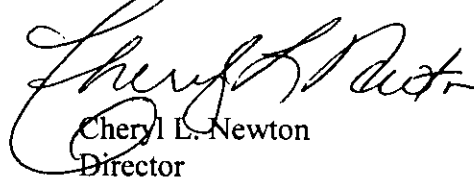
The U.S. Environmental Protection Agency is issuing the enclosed Notice of Violations (Notice) to DP&L. This Notice is issued in accordance with Section 113(a) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a).

EPA has determined that DP&L is violating the Prevention of Significant Deterioration requirements under Section 165 of the Act, 42 U.S.C. § 7475, the Operating Permit requirements under Title V of the Act, 42 U.S.C. §§ 7661 – 7661e, and operating requirements under the Ohio State Implementation Plan at OAC § 3745-31 *et seq.* at its O.H. Hutchings generating station.

EPA is offering you an opportunity to confer with us about the violations cited in the Notice. The conference will give you an opportunity to present information on the specific findings of violations, and the steps you will take to bring the facility into compliance. Please plan for your technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contacts in this matter are Julie Morris and Kevin Vuilleumier. You may call them at (312) 886-0863 or (312) 886-6188 to request a conference. You should make your request for a conference no later than 10 calendar days after you receive this letter, and we should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cheryl L. Newton".

Cheryl L. Newton
Director

Air and Radiation Division

Enclosure

cc: Robert Hodanbosi
Ohio Environmental Protection Agency

John Paul, Administrator
Regional Air Pollution Control

Charles T. Wehland
Jones Day

IN THE MATTER OF:

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) **NOTICE OF VIOLATION**

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) **EPA-5-10-OH-02**
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The U.S. Environmental Protection Agency is issuing this Notice of Violations (Notice) to Dayton Power and Light Company (referred to in this Notice as “DP&L” or “you”) under Section 113(a) of the Clean Air Act (Act), 42 U.S.C. § 7413(a)(1). The authority to issue this Notice has been delegated to the Regional Administrator of the EPA Region 5, and redelegated to the Director, Air and Radiation Division.

I. Statutory and Regulatory Background

1. When the Act was passed in 1970, Congress exempted existing facilities, including the coal-fired power plant that is the subject of this Notice, from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of Appeals for the D.C. Circuit explained in *Alabama Power v. Costle*, 636 F.2d 323, 400 (D.C. Cir. 1979), “[t]he statutory scheme intends to ‘grandfather’ existing industries; but . . . this is not to constitute a perpetual immunity from all standards under the PSD program.” Rather, the Act requires grandfathered facilities to install modern pollution control devices whenever the unit is proposed to be modified in such a way that its emissions may increase.

2. The Prevention of Significant Deterioration (PSD) provisions of Part C of Title I of the Act establish specific requirements applicable to the construction and modification of major emitting facilities located in areas designated as either attainment or unclassifiable for purposes of meeting the National Ambient Air Quality Standards (NAAQS). *See* 42 U.S.C. §§ 7470-7492.

3. These PSD provisions prohibit, among other things, a major emitting facility from constructing a major modification unless it has obtained a PSD permit, applies Best Available Control Technology (BACT), and conducts an analysis to determine the air quality impacts. *See* Section 165 of the Act, 42 U.S.C. § 7475.
4. States are required to adopt state implementation plans (SIPs) that contain regulations to implement the PSD provisions. *See* Section 110(a) and 161 of the Act, 42 U.S.C. §§ 7410(a) and 7471.
5. A state may comply with Sections 110(a) and 161 of the Act by having its own PSD regulations approved as part of its SIP by EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166.
6. If a state does not have PSD regulations that have been approved by EPA and incorporated into its SIP, the federal PSD regulations set forth at 40 C.F.R. § 52.21 may be incorporated into the SIP. 40 C.F.R. § 52.21(a).
7. On August 7, 1980 EPA disapproved Ohio's proposed PSD program. 45 *Fed. Reg.* 52741. Accordingly, EPA incorporated the PSD regulations of 40 C.F.R. § 52.21(b) through (w) into the Ohio SIP at 40 C.F.R. § 1884. The regulations codified at 40 C.F.R. § 52.21 were incorporated into the Ohio SIP until October 10, 2001.
8. Effective October 10, 2001, EPA conditionally approved and incorporated Ohio's PSD regulations into the SIP. 66 *Fed. Reg.* 51570. On January 22, 2003, EPA fully approved Ohio's PSD SIP regulations. 68 *Fed. Reg.* 2909. The Ohio PSD regulations currently are codified at Ohio Administrative Code (OAC) §§ 3745-31-11 to 3745-31-20.
9. "Major stationary source" is defined to include any fossil-fuel fired steam electric plant of more than 250 million British thermal units per hour (MMBtu/hr) heat input that emits or has the potential to emit one hundred tons per year or more of any regulated air pollutant. 40 C.F.R. § 52.21(b)(1)(i)(a) and OAC § 3745-31-01(SS)(2).
10. "Major modification" is defined as any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any pollutant subject to regulation under the Act. 40 C.F.R. § 52.21(b)(2)(i) and OAC § 3745-31-01(RR).
11. "Significant" is defined at (in reference to a net emissions increase) an increase in the following amounts of the following pollutants: 40 tons per year for sulfur dioxide (SO₂), 40 tons per year for nitrogen oxides (NO_x), and 15 tons per year for particulate matter less than 10 microns (PM₁₀). 40 C.F.R. § 52.21(b)(23)(i) and OAC § 3745-31-01(SSS).
12. "Net emissions increase" means the amount by which the sum of the following exceeds zero: (a) any increase in actual emissions from a particular physical change or change in method of operation at a stationary source; and (b) any other increases and decreases in actual emissions

at the source that are contemporaneous with the particular change and are otherwise creditable. 40 C.F.R. § 52.21(b)(3)(i) and § OAC 3745-31-01(YZ).

13. A major stationary source constructing a major modification in an attainment area must, among other things, obtain a PSD permit, install and operate BACT for each pollutant subject to regulation under the Act for which the modification would result in a significant net emissions increase, and conduct an analysis to determine the air quality impacts. 40 C.F.R. §§ 52.21(i), (j), and (k), respectively; and OAC §§ 3745-31-02, 3745-31-15, and 3745-31-16, respectively.

B. Title V of the Act

14. Title V of the Act, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including "major sources." The purpose of Title V is to ensure that all applicable requirements -- including PSD, Nonattainment NSR, and NSPS requirements -- are included in the source's Title V operating permit.

15. "Major source" means, among other things, any source that emits or has the potential to emit one hundred tons per year or more of any air pollutant. Section 501(2)(B) of the Act, 42 U.S.C. § 7661(2)(B).

16. Section 503 of the CAA, 42 U.S.C. § 7661b, sets forth the requirement to timely submit an application for an operating permit, including information required to be submitted with the application.

17. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), requires that each Title V operating permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a SIP. 42 U.S.C. § 7661c(a).

18. Under Title V of the Act, EPA promulgated regulations governing state Title V operating permit programs. The regulations are set forth at 40 C.F.R. Part 70.

19. EPA approved Ohio's Title V operating program on August 15, 1995. 60 *Fed. Reg.* 42045. Ohio's Title V operating permit regulations are codified at OAC Chapter 3745-77, and are federally enforceable under Section 113(a)(3) of the Act, 42 U.S.C. 7413(a)(3).

20. A source subject to the Title V operating permit program shall not operate the source after the date that a timely and complete Title V permit application is required to be submitted, except in compliance with a Title V operating permit. OAC § 3745-77-02(A). *See also* 40 C.F.R. § 70.1(b) ("All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements.")

21. A Title V operating permit shall include emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at time of issuance. OAC § 3745-77-07(A), *see also* 40 C.F.R. § 70.1(b).

22. The owner or operator of a source subject to the Title V operating permit program is required to submit an application that includes, among other things, a citation to and description of all applicable requirements. OAC § 3745-77-03(A), *see also* 40 C.F.R. § 70.5.

23. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. OAC § 3745-77-03(F), *see also* 40 C.F.R. § 70.5.

II. General Factual Background

24. DP&L is incorporated in Ohio.

25. DP&L is a “person,” as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

26. DP&L owns and operates the Hutchings Station, located in Miamisburg, Ohio.

27. At all times relevant to this Notice, the Hutchings Station was located in an area that was classified as attainment or unclassifiable for NO_x, SO₂, and PM₁₀.

28. The Hutchings Station consists of six operating coal-fired boilers: Boilers B001 through B006. Boilers B001 through B006 are pulverized, dry bottom, tangentially fired coal-fired boilers. The boilers were installed in 1949 through 1953.

29. The Hutchings Station is a fossil fuel-fired electric utility steam generating plant.

30. The Hutchings Station is a “fossil fuel-fired steam electric plant of more than 250 million British thermal units per hour,” that emits or has the potential to emit greater than 100 tons per year each of NO_x, SO₂, or PM₁₀. Therefore, the plant constitutes a “major stationary source” within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(a), a “major emitting facility” within the meaning of Section 169(1) of the Act, 42 U.S.C. § 7479(1); and a “major source” within the meaning of Section 501(2)(B) of the Act, 42 U.S.C. § 7661(2)(B).

31. In 2001, DP&L undertook various physical changes and/or changes in the method of operation (Projects) to Boiler 3 and Boiler 6 at the Hutchings Station. For each Project, the boiler and approximate date DP&L undertook the project on the boiler is listed in Appendix A to this Notice.

III. Violations

A. Prevention of Significant Deterioration

32. Each project resulted in a “significant” “net increase in emissions” of SO₂, NO_x and/or PM₁₀ within the meaning of 40 C.F.R. § 52.21(b)(23)(i), OAC § 3745-31-01(SSS); and

40 C.F.R. § 52.21(b)(3)(i), and OAC § 3745-31-01(Y Y).

33. Therefore, each project described in Appendix A constituted a “major modification,” as that term is defined at 40 C.F.R. § 52.21(b)(2)(i) and OAC § 3745-31-01(RR).

34. For each of the Projects listed in Appendix A, DP&L violated and continues to violate Section 165 of the Act, 42 U.S.C. § 7475 by constructing a major modification to a major stationary source in an attainment area and failing to, among other things, obtain a PSD permit, install and operate BACT for each pollutant for which the modification resulted in a significant net emissions increase, and conduct an analysis to determine the air quality impacts. 40 C.F.R. §§ 52.21(i), (j), and (k), respectively; and OAC §§ 3745-31-02(A), 3745-31-02, 3745-31-15, and 3745-31-16, respectively.

B. Title V of the Act

35. DP&L, as a “major source,” is subject to Title V of the Act and its implementing regulations at 40 C.F.R. Part 70 and OAC Chapter 3745-77.

36. As set forth above, DP&L undertook major modifications at the Hutching Station that subjected it to the requirements of the PSD provisions.

37. DP&L violated and continues to violate Title V of the Act and its implementing regulations by operating Hutchings Station with a Title V permit that does not include all applicable requirements, by failing to submit a complete permit application that identifies all applicable requirements, and by failing to update its Title V permit application to identify all applicable requirements. *See* OAC §§ 3745-77-02(A), 3745-77-03(A), 3745-77-03(F), and 3745-77-07(A); *see also* 40 C.F.R. §§ 70.1(b) and 70.5.

IV. Enforcement Authority

38. Sections 113(a)(1) and (3) of the Act, 42 U.S.C. §§ 7413(a)(1) and (3), provide that the Administrator may bring a civil action in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b), whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of, *inter alia*, the PSD requirements of Section 165(a) of the Act, 42 U.S.C. § 7475(a); Title V of the Act, 42 U.S.C. §§ 7661-7661f, or any rule or permit issued thereunder; or the PSD provisions of the Ohio SIP. *See also* 40 C.F.R. § 52.23.

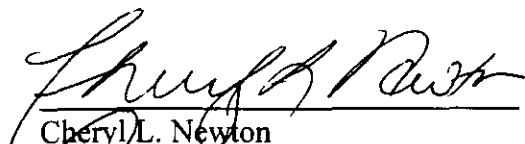
39. Section 113(b) of the Act, 42 U.S.C. § 7413(b), authorizes the Administrator to initiate a judicial enforcement action for a permanent or temporary injunction, and/or for a civil penalty of up to \$25,000 per day for each violation occurring on or before January 30, 1997; up to \$27,500 per day for each such violation occurring on or after January 31, 1997 and up to and including March 15, 2004; up to \$32,500 per day for each such violation occurring on or after March 16, 2004 through January 12, 2009; and up to \$37,500 per day for each such violation occurring on or after January 13, 2009, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, 40 C.F.R. § 19.4, and 74 *Fed. Reg.*

626 (Jan. 7, 2009) against any person whenever such person has violated, or is in violation of, *inter alia*, the requirements or prohibitions described in the preceding paragraph.

40. Section 167 of the Act, 42 U.S.C. § 7477, authorizes the Administrator to initiate an action for injunctive relief, as necessary to prevent the construction, modification or operation of a major emitting facility which does not conform to the PSD requirements in Part C of the Act.

Dated

11/18/09


Cheryl L. Newton
Director
Air and Radiation Division

Appendix A: O.H. Hutchings generating station

Boiler	Dates¹	Description²
3	3/23/2001 to 4/14/2001	Superheater replacement
6	10/09/2001 to 12/02/2001	Economizer replacement

¹ The dates provided represent approximate dates the modifications were completed.

² The list of activities described is not intended to be an exhaustive list, but rather a description of the major work completed.

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent a Notice of Violations, No. **EPA-5-10-OH-02**, by Certified Mail, Return Receipt Requested, to:

The Dayton Power and Light Company
Mark Guerriero, Plant Manager
O.H. Hutchings Station
9200 Chautaugua Road
Miamisburg, Ohio 45342

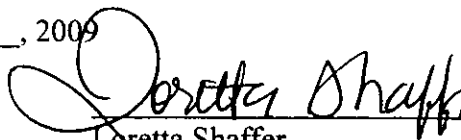
I also certify that I sent copies of the Notice of Violations by first class mail to:

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43138

John Paul, Administrator
Regional Air Pollution Control Agency
117 South Main Street
Dayton, Ohio 45422-1280

Charles T. Wehland
Jones Day
77 West Wacker
Chicago, Illinois 60601

On the 18 day of November, 2009



Loretta Shaffer
Administrative Program Assistant

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0006 0192 1284